

## **Explanatory Statement**

*Broadcasting Services Act 1992*

### **Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 1 of 2017)**

Issued by the Authority of the Minister for Communications

#### **Purpose**

The *Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 1 of 2017)* (the Notice) is made by the Minister for Communications (the Minister) under subsection 115(2) of the *Broadcasting Services Act 1992* (the BSA).

The purpose of this Notice is to amend the *Broadcasting Services (Events) Notice (No. 1) 2010* (the Principal Notice) to remove certain events from the Principal Notice to permit the events to be premiered on a free-to-air television digital multichannel. The Notice also removes a spent provision from the Principal Notice.

The Notice is a legislative instrument for the purposes of subsection 8(2) of the *Legislation Act 2003*.

#### **Background**

##### *Legislative background*

Subsection 115(1) of the BSA provides that the Minister may make a notice that specifies events that, in the Minister's opinion, should be televised free to the general public. An event, or an event of a kind, specified in a notice under subsection 115(1) is an 'anti-siphoning event' for the purposes of the definition of that term in section 6 of the BSA. The notice made under subsection 115(1) is commonly known as the 'anti-siphoning list'.

The inclusion of an event in the anti-siphoning list triggers a licence condition for subscription television broadcasters that prohibits subscription television broadcasters from acquiring rights to televise the event ahead of free-to-air commercial television broadcasters and national broadcasters (see section 99 of the BSA and paragraph 10(1)(e) of Schedule 2 to the BSA).

The BSA also imposes restrictions on both free-to-air commercial television broadcasters and national broadcasters with regard to televising events from the anti-siphoning list. Such restrictions ensure that anti-siphoning events (or parts of these events) are not shown on the broadcasters' standard definition or high definition digital television multichannels without first being shown, or being shown simultaneously, on the broadcasters' main channels (see Part 4A of Schedule 4 to the BSA). These restrictions continue to apply now that the 'simulcast period' has concluded.

Subsection 115(2) of the BSA allows the Minister to amend a notice made under subsection 115(1) of the BSA to remove an event from the notice.

The Notice amends the Principal Notice to remove each match of the 2017 International Tennis Federation Davis Cup World Group tournament (the ‘Davis Cup’) involving an Australian representative team. The events to be removed are those specified as exceptions in clause 9.4 of the Schedule to the Principal Notice, as amended by this Notice. The Notice also removes a spent provision from the Principal Notice concerning past 2016 Davis Cup events.

### *2017 Davis Cup*

The Davis Cup tournament is the premier international teams event in men’s tennis. The Australian representative team will compete against the Czech Republic representative team in Australia between 3 and 5 February 2017 (inclusive). If the Australian team progresses through the tournament, it will also compete in one or more additional ties (elimination rounds) to be held in 2017.

The Notice will remove from the Principal Notice the matches in the ties involving the Australian representative team in the 2017 Davis Cup World Group tennis tournament. This amendment will allow (but not require) the free-to-air broadcaster that holds the free-to-air broadcast rights to these events (the Seven Network and its affiliated broadcasters) to premiere the events on a digital multichannel.

Removing the events from the anti-siphoning list will provide flexibility in the free-to-air television coverage of the matches in question and thus enhance the viewing experience for Australian audiences.

### **Consultation**

The office of the Minister for Communications consulted with the Seven Network and Tennis Australia in relation to this Notice. The Seven Network holds the Australian free-to-air broadcast rights to the 2017 Davis Cup tennis tournament.

### **Notes on Clauses**

Section 1 provides that the name of the Notice is *the Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 1 of 2017)*.

Section 2 provides that the Notice will commence on the day it is registered on the Federal Register of Legislation.

Section 3 provides that the Notice is made under subsection 115(2) of the BSA.

Section 4 provides that the Principal Notice is amended in accordance with the item contained in Schedule 1 to the Notice.

### Schedule 1 - Amendments

Item 1 of the Schedule repeals the existing clause 9.4 of the Schedule to the Principal Notice and substitutes it with a new clause 9.4.

The effect of the amendment is to exclude from the anti-siphoning list any matches in any of ties of the 2017 International Tennis Federation Davis Cup World Group tennis tournament involving the Australian representative team.

The replacement clause 9.4 no longer contains the previously specified exclusion dealing with matches of the 2016 International Tennis Federation Davis Cup World Group tennis tournament involving Australian representative teams. As those matches have been played, the exclusion is spent and no longer required.

Any other matches in any of ties of the International Tennis Federation Davis Cup World Group involving Australian representative teams will continue to be specified in clause 9.4 of the Schedule to the Principal Notice.

## Statement of Compatibility with Human Rights

(prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*)

The *Broadcasting Services (Events) Notice (No. 1) 2010 (Amendment No. 1 of 2017)* (the Notice) amends the *Broadcasting Services (Events) Notice (No. 1) 2010* (the Principal Notice) to exclude from the Principal Notice each match of the 2017 International Tennis Federation Davis Cup World Group tournament involving an Australian representative team.

The purpose of the Principal Notice, also known as the ‘anti-siphoning list’, is to ensure that specified events are televised free to the Australian public. The removal of certain 2017 Davis Cup matches from the anti-siphoning list, as set out in the Notice, will give relevant free-to-air broadcasters greater flexibility and increase live coverage of those matches. This will enhance the viewing experience for Australian audiences.

Australia is a signatory to the International Covenant on Civil and Political Rights (the ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) (two of the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*). Article 19(2) of the ICCPR protects freedom of expression, including the right to seek, receive and impart information and ideas of all kinds, and the means of their dissemination. Article 15(1) of the ICESCR protects the right of everyone to take part in cultural life. Cultural life includes sports.

The Notice is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. This is because the Notice promotes freedom of expression and cultural rights by facilitating greater access by all Australians to live coverage of Davis Cup matches.